

Office of Chief Counsel
Internal Revenue Service
memorandum
CC:LM:CTM:SF:TL-N-7068-00
BAKranzthor

date: December 20, 2000
to: Revenue Agent Lisa Meyerholz
from: Area Counsel, Communications, Technology and Media

subject: [REDACTED]

Consent language

DISCLOSURE STATEMENT

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Question: How should consents be prepared for the [REDACTED] and the [REDACTED] for calendar years [REDACTED] - [REDACTED]?

Answer: For [REDACTED] and [REDACTED], the agent should prepare one Form 872-P in the name of "[REDACTED]," to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner," and a second Form 872-P in the name of "[REDACTED]," also to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner." For [REDACTED] the agent should obtain a Form 872-P in the name of "[REDACTED]," to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner."

Discussion: The [REDACTED] and the [REDACTED] each filed Form 1065 for calendar years [REDACTED] and [REDACTED]. Each had two equal partners, the [REDACTED] and the [REDACTED].

██████████. Since the partners of these entities are not natural persons or estates, these entities do not qualify for the small partnership exception, and they should be treated as TEFRA partnerships. I.R.C. § 6231(a)(1)(B)(i); Treas. Reg. § 301.6231(a)(1)-1T(a)(2).

The ██████████ and ██████████ Form 1065 for the ██████████ and the ██████████ Form 1065 for the ██████████ properly designated as Tax Matters Partner (TMP) the "██████████," a "limited liability company member."

The ██████████ Form 1065 for the ██████████, however, designated as TMP "██████████," who does not, as an individual, own any interest in the ██████████. The address and identifying number given for "██████████" are identical to what is given for the "██████████."

The ██████████ and ██████████ Form 1065 tax returns for both entities were signed by "██████████." Prior consents to extend the statute of limitations for both entities were signed by "██████████."

NBAP's were issued on ██████████, to the ██████████ for ██████████ and ██████████ addressed to "██████████, Trustee, ██████████, Tax Matters Partner." The NBAP for the ██████████ for ██████████ and ██████████ was issued to "██████████, Tax Matters Partner."

Under these circumstances, we believe that the TMP for both entities for ██████████ and ██████████ is the ██████████. The ██████████ was properly designated as TMP on the tax returns filed by the ██████████ for ██████████ and ██████████, and by the ██████████ for ██████████. The omission of the words, "██████████" from the ██████████'s designation for ██████████ was inadvertent, in our opinion.¹

The Tax Court has repeatedly held that the omission of the title of a person signing in a representative capacity (where the circumstances indicate the omission was inadvertent) does not invalidate an otherwise valid consent. See Eversole v. Commissioner, 46 T.C. 56, 61 (1966) (waiver addressed to "Estate of John T. Eversole, Deceased and Mrs. Ina Eversole, surviving wife," signed by "Ina Eversole," held valid

¹This omission cannot result in ██████████ as an individual being TMP of the ██████████ at any time, since ██████████ as an individual was at no time a partner or a member of that entity. Under Treas. Reg. § 301.6231(a)(7)-1 and -2, the TMP must be a partner (or, in the case of an LLC, a member) of the entity.

not only as to Ina individually, but also as to the estate); Georgetown Petroleum-Edith Forrest, D & D Partnership v. Commissioner, T.C. Memo. 1994-13 (failure to identify individual's representative capacity does not invalidate the agreement); Pleasanton Gravel Co. v. Commissioner, 85 T.C. 839, 854-855 (1985) (failure to list the corporation's name beside the president's signature did not invalidate an otherwise proper waiver).

Accordingly, although the tax returns of these entities and the corresponding consents should have been signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner" and not simply by "[REDACTED]" we did not think this technical error invalidated the [REDACTED] consent.²

The NBAP's issued on [REDACTED], to the [REDACTED] were properly addressed. The NBAP issued to the [REDACTED] should have been addressed to "[REDACTED], Trustee, [REDACTED], Tax Matters Partner," instead of to "[REDACTED], Tax Matters Partner," but again, considering the circumstances, we did not believe that technical error invalidated that NBAP.

²Since we regard both LLC's to have validly appointed the [REDACTED] to be their TMP for both [REDACTED] and [REDACTED], we do not consider the consequences if the [REDACTED]'s technically flawed designation of "[REDACTED]" as TMP for [REDACTED] was regarded as no designation at all. Under Treas. Reg. § 301.6231(a)(7)-1, if the partnership has not designated a TMP, or if the partnership's designation as been terminated, then the general partner having the largest profits interest is the TMP, and in the event of a tie, the TMP would be the first such partner in alphabetical order. Under Treas. Reg. § 301.6231(a)(7)-2, the same rules apply to an LLC, for designations, selections, and terminations of TMPs after December 23, 1996, except only a "member-manager" is eligible to be a TMP. A "member manager" is generally a member of an LLC who is vested with authority to manage the business of the LLC. Furthermore, the same regulation provides, "Any other reasonable designation or selection of a tax matters partner of an LLC is binding for periods prior to December 23, 1996." Applying these rules to the [REDACTED] for [REDACTED] would be problematic if the [REDACTED] Trust is not regarded as having been properly designated as TMP for [REDACTED]. We would need to know whether the [REDACTED] is a member-manager, since if so it could be the TMP under the equal profits, first in alphabet rule. Even if the [REDACTED] is not the [REDACTED] TMP, the [REDACTED] consent could still be valid, if deemed signed by the [REDACTED] and that entity is authorized to sign the consent. I.R.C. § 6229(b)(1)(B); See Cambridge Research and Development Group v. Commissioner, 97 T.C. 287 (1991).

"As of" [REDACTED],³ [REDACTED] merged with [REDACTED], with [REDACTED] surviving and [REDACTED] not surviving. For [REDACTED] filed a Form 1065 for the combined enterprise. Accordingly, for the [REDACTED] year the agent should obtain a Form 872-P in the name of "[REDACTED]" to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner."

For the [REDACTED] and [REDACTED] years, the subsequent dissolution of the [REDACTED], does not destroy the authority of the TMP of the [REDACTED] for [REDACTED] and [REDACTED] to continue to act on behalf of the [REDACTED] for those years. Chef's Choice Produce v. Commissioner, 95 T.C. 388 (1990); see also Monetary II Limited Partnership v. Commissioner, 47 F.3d 342 (9th Cir. 1995). Therefore, the agent should prepare one Form 872-P for the years [REDACTED] and [REDACTED] in the name of "[REDACTED]" to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner," and a second Form 872-P for the years [REDACTED] and [REDACTED] in the name of "[REDACTED]" also to be signed by "[REDACTED], Trustee, [REDACTED], Tax Matters Partner."

Letter 907 and Publication 1035 should be provided along with these consent forms.

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By: 
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³As far as we know, [REDACTED] and [REDACTED] each included its activities on [REDACTED], in its separate Form 1065 for [REDACTED]. We do not see any need for [REDACTED] to file a "15 minute" return for the combined enterprises' activities for the day (or portion of the day) of [REDACTED].